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originate in Canada for temporary use in the United States and return to Canada. All other temporary imports shall be in accordance with §§123.3 and 123.4 of this subchapter.

(b) *Permanent and temporary export of defense articles.* Except as provided in Supplement No. 1 to part 126 of this subchapter and for exports that transit third countries, Port Directors of U.S. Customs and Border Protection and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person, or for return to the United States, the permanent and temporary export to Canada without a license of unclassified defense articles and defense services identified on the U.S. Munitions List (22 CFR 121.1). The exceptions are subject to meeting the requirements of this subchapter, to include 22 CFR 120.1(c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and §126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment. For purposes of this section, "Canadian-registered person" is any Canadian national (including Canadian business entities organized under the laws of Canada), dual citizen of Canada and a third country other than a country listed in §126.1 of this subchapter, and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet Web site of the Directorate of Defense Trade Controls and by other means.

(c) [Reserved]

(d) *Reexports/retransfer.* Reexport/retransfer in Canada to another end-user or end-use or from Canada to another destination, except the United States, must in all instances have the prior approval of the Directorate of Defense Trade Controls. Unless otherwise exempt in this subchapter, the original exporter is responsible, upon request from a Canadian-registered person, for obtaining or providing reexport/retransfer approval. In any instance when the U.S. exporter is no longer available to the Canadian end-user the request for reexport/retransfer may be made directly to the Directorate of Defense Trade Controls. All requests must include the information in §123.9(c) of this subchapter. Reexport/retransfer approval is acquired by:

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NOTES TO §126.5: 1. In any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use other than by a qualified Canadian-registered person or for export to another foreign destination, other than the

United States, in its original form or incorporated into another item, an export license must be obtained prior to the transfer to Canada.

2. Additional exemptions exist in other sections of this subchapter that are applicable to Canada, for example §§123.9, 125.4, and 124.2, that allow for the performance of defense services related to training in basic operations and maintenance, without a license, for certain defense articles lawfully exported, including those identified in Supplement No. 1 to part 126 of this subchapter.

§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.

(a) A license from the Directorate of Defense Trade Controls is not required if:

(1) The article or technical data to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, and

(2) The article or technical data is delivered to representatives of such a country or organization in the United States; and

(3) The article or technical data is to be exported from the United States on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service (DTS).

(b) *Foreign military aircraft and naval vessels.* A license is not required for the entry into the United States of military aircraft or naval vessels of any foreign state if no overhaul, repair, or modification of the aircraft or naval vessel is to be performed. However, Department of State approval for overflight (pursuant to the 49 U.S.C. 40103) and naval visits must be obtained from the Bureau of Political-Military Affairs, Office of International Security Operations.

(c) *Foreign Military Sales Program.* A license from the Directorate of Defense Trade Controls is not required if the defense article or technical data or a defense service to be transferred was sold, leased or loaned by the Department of Defense to a foreign country or international organization under the Foreign Military Sales (FMS) Program

of the Arms Export Control Act pursuant to an Letter of Offer and Acceptance (LOA) authorizing such transfer which meets the criteria stated below:

(1) Transfers of the defense articles, technical data or defense services using this exemption may take place only during the period which the FMS Letter of Offer and Acceptance (LOA) and implementing USG FMS contracts and subcontracts are in effect and serve as authorization for the transfers hereunder in lieu of a license. After the USG FMS contracts and subcontracts have expired and the LOA no longer serves as such authorization, any further provision of defense articles, technical data or defense services shall not be covered by this section and shall instead be subject to other authorization requirements of this subchapter; and

(2) The defense article, technical data or defense service to be transferred are specifically identified in an executed LOA, in furtherance of the Foreign Military Sales Program signed by an authorized Department of Defense Representative and an authorized representative of the foreign government, and

(3) The transfer of the defense article and related technical data is effected during the duration of the relevant Letter of Offer and Acceptance (LOA), similarly a defense service is to be provided only during the duration of the USG FMS contract or subcontract and not to exceed the specified duration of the LOA, and

(4) The transfer is not to a country identified in §126.1 of this subchapter, and

(5) The U.S. person responsible for the transfer maintains records of all transfers in accordance with part 122 of this subchapter, and

(6) For transfers of defense articles and technical data,

(i) The transfer is made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Directorate of Defense Trade Controls pursuant to part 122 of this subchapter, and

(ii) At the time of shipment, the Port Director of U.S. Customs and Border Protection is provided an original and

properly executed DSP-94 accompanied by a copy of the LOA and any other documents required by U.S. Customs and Border Protection in carrying out its responsibilities. The Shippers Export Declaration or, if authorized, the outbound manifest, must be annotated “This shipment is being exported under the authority of Department of State Form DSP-94. It covers FMS Case [insert case identification], expiration [insert date]. 22 CFR 126.6 applicable. The U.S. Government point of contact is _____, telephone number _____,” and

(iii) If, classified hardware and related technical data are involved the transfer must have the requisite USG security clearance and transportation plan and be shipped in accordance with the Department of Defense National Industrial Security Program Operating Manual, or

(7) For transfers of defense services:

(i) A contract or subcontract between the U.S. person(s) responsible for providing the defense service and the USG exists that:

(A) Specifically defines the scope of the defense service to be transferred;

(B) Identifies the FMS case identifier,

(C) Identifies the foreign recipients of the defense service

(D) Identifies any other U.S. or foreign parties that may be involved and their roles/responsibilities, to the extent known when the contract is executed,

(E) Provides a specified period of duration in which the defense service may be performed, and

(ii) The U.S. person(s) identified in the contract maintain a registration with the Directorate of Defense Trade Controls for the entire time that the defense service is being provided. In any instance when the U.S. registered person(s) identified in the contract employs a subcontractor, the subcontractor may only use this exemption when registered with DDTC, and when such subcontract meets the above stated requirements, and

(iii) In instances when the defense service involves the transfer of classified technical data, the U.S. person transferring the defense service must have the appropriate USG security

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clearance and a transportation plan, if appropriate, in compliance with the Department of Defense National Industrial Security Program Operating Manual, and

(iv) The U.S. person responsible for the transfer reports the initial transfer, citing this section of the ITAR, the FMS case identifier, contract and sub-contract number, the foreign country, and the duration of the service being provided to the Directorate of Defense Trade Controls using DDTC's Direct Shipment Verification Program.

[65 FR 45287, July 21, 2000, as amended at 70 FR 50964, Aug. 29, 2005; 71 FR 20546, Apr. 21, 2006]

§ 126.7 Denial, revocation, suspension or amendment of licenses and other approvals.

(a) *Policy.* Licenses or approvals shall be denied or revoked whenever required by any statute of the United States (see §§127.7 and 127.11 of this subchapter). Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted under this subchapter may be revoked, suspended, or amended without prior notice whenever:

(1) The Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable; or

(2) The Department of State believes that 22 U.S.C. 2778, any regulation contained in this subchapter, or the terms of any U.S. Government export authorization (including the terms of a manufacturing license or technical assistance agreement, or export authorization granted pursuant to the Export Administration Act, as amended) has been violated by any party to the export or other person having significant interest in the transaction; or

(3) An applicant is the subject of an indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(4) An applicant or any party to the export or the agreement has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(5) An applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from, any agency of the U.S. Government; or

(6) An applicant, any party to the export or agreement, any source or manufacturer of the defense article or defense service or any person who has a significant interest in the transaction has been debarred, suspended, or otherwise is ineligible to receive an export license or other authorization from any agency of the U.S. government (e.g., pursuant to debarment by the Department of Commerce under 15 CFR part 760 or by the Department of State under part 127 or 128 of this subchapter); or

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application or other request for approval under this subchapter or as required in the instructions in the applicable Department of State form; or

(8) An applicant is subject to sanctions under other relevant U.S. laws (e.g., the Missile Technology Controls title of the National Defense Authorization Act for FY 1991 (Pub. L. 101-510); the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102-182); or the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102-484)).

(b) *Notification.* The Directorate of Defense Trade Controls will notify applicants or licensees or other appropriate United States persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.

(c) *Reconsideration.* If a written request for reconsideration of an adverse decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Directorate of Defense Trade Controls.

(d) *Reconsideration of certain applications.* Applications for licenses or other requests for approval denied for repeated failure to provide information or documentation expressly required